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KODAK PATENT FACSIMILE TRANSMISSION

Page 1 of 8 pages

To: _____

From: _____

FAX NO. 28-1-571-273-8300
Examiner Lawrence D. Ferguson
Group 1774
USPTO

FAX NO. 585-477-1148
Arthur E. Kluegel
Patent Legal Staff
Eastman Kodak Company

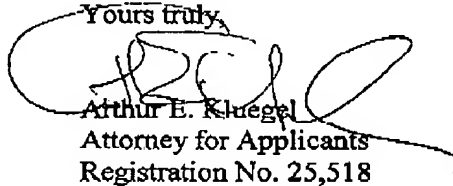
November 28, 2006

Re: US 10/694,547 filed October 27, 2003
Docket No. 86409/AEK

Dear Examiner Ferguson:

Pursuant to our telephone discussion of November 27, 2006, enclosed please find my Declaration with enclosed copy of the Office Action and my note of July 27, 2006 regarding the above-referenced matter.

Yours truly,



Arthur E. Kluegel
Attorney for Applicants
Registration No. 25,518

AEK/dlm
Rochester, NY 14650
Telephone: (585) 477-2625
Facsimile: (585) 477-1148

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Customer No. 01333

Response under 37 C.F.R. 1.116
- Expedited Examining Procedure -
Examining Group 1774

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Tomohiro Ishikawa, et al

OPTICAL MULTILAYER

Serial No. US 10/694,547

Filed 27 October 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

Group Art Unit: 1774

Examiner: Lawrence D. Ferguson

I hereby certify that this correspondence was sent
by facsimile transmission to the United States
Patent and Trademark Office on the date set forth
below.

Deidra L. Mack
Deidra L. Mack

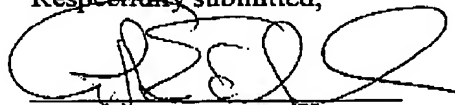
November 28, 2006
Date

DECLARATION

As a registered patent attorney, the undersigned declares that he called and left a message for Examiner Ferguson on July 27, 2006 to the effect that the "Statement of Common Ownership" alleged to have been omitted by the Examiner, was, in fact at page 5 of the Response of May 4, 2006 and was separately titled. The enclosed copy of the Office Action and the note of 7/27 were made at the time the message was left. The notes below the line were made just recently.

I independently recall leaving the message because it was very unusual to have an examiner overlook a portion of a Response in this manner.

Respectfully submitted,



Attorney for Applicant(s)
Registration No. 25,518

Arthur E. Kluegel/dlm
Rochester, NY 14650
Telephone: 585-477-2625
Facsimile: 585-477-1148

NOV 28 2006



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,547	10/27/2003	Tomohiro Ishikawa	86409/AEK	2409

7590 07/21/2006
Paul A. Leipold
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

EASTMAN KODAK CO.

JUL 25 2006

PATENT LEGAL STAFF

DATE MAILED: 07/21/2006

EXAMINER FERGUSON, LAWRENCE D	
ART UNIT 1774	PAPER NUMBER



Please find below and/or attached an Office communication concerning this application or proceeding.

*Final Rejection**Entered by ECR*

7/27
Left Message for Exr
as to where the "Stuff Comm On"
is. He should call
and allow it
Call again on 7/15
AK to call
Exr + not
in Box 1.

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DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment mailed May 9, 2006.
- Claims 1, 8, 10 and 20 have been amended and claim 2 was cancelled rendering claims 1 and 3-20 pending.

Claim Rejections – 35 USC § 103(a)

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elman et al (U.S. 6,937,310).

Elman discloses an optical multilayer comprising a polymeric substrate made out of triacetylcellulose, which has a non-zero out of plane birefringence and an amorphous polymeric overlayer having an out of plane birefringence that is more negative than -0.005 throughout the range of 370 nm and 700nm (column 4, line 66 through column 5, line 19 and column 6, lines 42-53). Elman further discloses the polymers contain non-visible chromophore groups in the polymer backbone (column 6, lines 60-67 and claim 15). The glass transition temperature (T_g) of the polymers used in the amorphous layer

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above 180°C, where the thickness of the polymer layer is less than 30um and the film has a transmission of greater or equal to 90% (column 7, lines 5-25). The substrate has a thickness of 80um (.08mm) and the polymeric layer has a vinylbiphenol component (column 9, lines 5-44 and column 10, lines 23-45). Elman discloses the substrate may be comprised of polycarbonate (column 14, lines 15-20). Elman teaches the invention is used for Liquid crystal displays which have polarizers and image devices with color reproduction (column 1, lines 20-21 and 40-60).

Elman does not explicitly disclose the polymeric overlayer is positive or more positive than 0.005. Elman discloses an optical multilayer comprising a polymeric substrate and an amorphous polymeric overlayer having an out of plane birefringence that is more negative than -0.005 throughout the range of 370 nm and 700nm (column 4, line 66 through column 5, line 19 and column 6, lines 42-53). Elman further teaches a typical liquid crystal device has a positive out of plane birefringence and the birefringence increase towards the shorter wavelength (column 3, lines 38-50). Although Elman does not explicitly disclose the polymeric overlayer is positive or more positive than 0.005, the out of plane birefringence is a property which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the out of plane birefringence, absent a showing of unexpected results, it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. out of plane birefringence) fails to render claims patentable in the absence of unexpected results. The out of plane birefringence is optimizable as it

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directly affects the orientation of the multilayer. It would have been obvious to one of ordinary skill in the art to make the optical multilayer with the limitations of the positive out of plane birefringence since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 USPQ 215 (CCPA 1980).

Response to Arguments

4. Objection of claim 13 is withdrawn due to Applicant amending the claims in compliance to the objection.

Rejection made under 35 U.S.C. 102(e) as being anticipated by Elman et al (U.S. 6,937,310) is withdrawn due to Applicant incorporating the limitations of claim 2 into claim 1.

Applicant argues the preceding Statement of Common Ownership" brings into play 35 USC 103(c) which prohibits the Examiner using the Elman patent as a reference through section 102(e). In order to exclude the Elman reference based upon common ownership, Applicant must submit the required statement (see MPEP 706.02(I)) for example, that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Applicant has failed to include this statement, therefore, the rejection made under 35 U.S.C. 103(a) as being unpatentable over Elman et al (U.S. 6,937,310) is maintained for reasons of record.

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5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Ferguson
Patent Examiner
AU 1774



RENA DYE
SUPERVISORY PATENT EXAMINER

A.U. 1774 7/11/04